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KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585				SALCE, JASON P
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/086,089
Filing Date: February 28, 2002
Appellant(s): SCHREER, SCOTT P.

Hassan A. Shakir
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/21/2009 appealing from the Office action mailed 7/24/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct

(4) Status of Amendments

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claims 1 and 9 rejected under 112 2nd Paragraph and the rejection of claim 1 under 102(e) using Pittman (**of record**) and the rejection of claim 9 under 103(a) using Pittman (**of record**) in view of the BMI Article, "What is a Cue Sheet?".

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Ginter et al. (U.S. Patent No. 6,253,193) published June 26, 2001

Wiser et al. (U.S. Patent No. 6,385,596) published May 7, 2002

BMI Article, "What is a Cue Sheet?" dated May 12, 1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (U.S. Patent No. 6,253,193) in view of Wiser et al. (U.S. Patent No. 6,385,596).

Referring to claim 1, Ginter discloses compensating at least one rights holder responsible for content of a digital audio recording file for the public performance of the content (**see Column 3, Lines 20-24 and Column 4, Lines 8-13 for the present invention employing a system to compensate a digital rights holder for content of a digital audio recording file (see Column 4, Lines 17-20)** for the public performance of the content (*note that is the electronic information is broadcasted, then it is broadcasted to be consumed by a listener/viewer*)), the content being included in a public broadcast (**see Column 3, Lines 24-29 for monitoring the content distributed from a digital broadcast and note arguments above for further portions of Ginter that teach that the electronic content can be broadcasted). Also note Column 260, Lines 11-15 for tracking “live performances”, which are public performances.**

Ginter also discloses associating an identification code with the digital audio recording file to produce an identified digital audio recording file (**see Column 130, Lines 7-11 for “embedded” content in a VDE object and Column 58, Lines 43-46 and Lines 59-64 for the VDE object containing a digital audio recording and further note Figure 20 for a content object containing identification information**).

Ginter also discloses generating an identification record correlating to the identification code and the digital audio recording file (**see Column 153, Line 32 through Column 154, Line 67 for an object registry containing a database that stores a list all of content objects that a user receives**).

Ginter also discloses broadcasting the identified digital audio recording file as an encoded audio signal, in the public broadcast (**see again Column 127, Lines 6-8 for "content delivery" over the media and Column 53, Lines 1-10 for broadcasting the information**), wherein the public broadcast being made by one of a radio or television station broadcast (**see Column 14, Lines 5-10**), including cable and satellite networks and Internet websites (**see Column 18, Lines 60-64**).

Ginter also discloses that the public broadcast is capable of remotely receivable simultaneously by a plurality of users constituting audience members of the public capable of receiving the audio signal being publicly broadcast (**see Column 127, Lines 45-49 for sending the VDE object to an electrical appliance and again note Column 3, Lines 24-33 for a digital broadcast being the distribution method for transmitting the VDE content to the user; simply by teaching a digital broadcast network allows the system of Ginter to be capable of publicly broadcasting content to a viewer). Also note above that television broadcasting networks can be used, which simultaneously transmit content to a plurality of audience members of a public broadcast.**

Ginter also discloses receiving by a monitoring station the audio signal being publicly broadcast and Ginter also discloses feeding by said monitoring station the

audio signal into monitoring means for detecting the identification (**see again Column 3, Lines 24-33, Figure 3 and Column 147, Line 36 through Column 148, Line 33 and the examiner's rebuttal to Applicant's arguments above**).

Ginter also discloses storing and correlating (**by said monitoring station**) the identification code and data (**see Column 153, Lines 53-59 for storing registration information relating to the VDE data in a secure database 610 and further note Column 147, Line 36 through Column 148, Line 33 for storing and correlating identification codes and data related to the data received**) solely related to the public broadcast (**see again Column 3, Lines 24-33 and the examiner's rebuttal to Applicant's arguments above**) and unrelated to whether even any user constituting the audience members of the public have received the broadcast (**see examiner's rebuttal to Applicant's arguments regarding this limitation**) that stores and associates the identification code, and based on said identification code records and stores the identification code (**see Column 153, Lines 62-64 for storing data from the VDE object 300**) and transmission and broadcast related data in a batch file (**see also saving shipping (transmission) and receiving (broadcast) data in tables (batch file) 444 and 446 in Figure 16**), said broadcast related data including a date that the encoded audio signal was monitored, a time of day that the encoded audio signal was monitored (**Column 155, Lines 22-23**), and the duration of the monitored encoded audio signal (**see Column 152, Lines 26-27 for a data length, which in the case of an audio file defines how long the song is**). *Also note that the system of Ginter discloses tracking VDE, which is the content that is broadcast, and thus*

inherently teaches the limitation, “unrelated to the users constituting the audience members of the public”.

Ginter teaches compensating a user for his/her work (**see Column 3, Lines 20-24 and Column 4, Lines 8-18**), but fails to disclose decoding and importing the batch file into a first database that catalogs performance, transmission and broadcast of the encoded audio signal and using the first database to accurately compensate the at least one performance artist responsible for generating content on said digital audio recording file.

Wiser discloses a logging module 1014, which catalogs performance, transmission and broadcast of the encoded audio signal (**see Column 23, Lines 18-19 for logging each purchase of a media data file 200, which if purchased are transmitted/broadcasted (see Column 11, Lines 53-55)**). Wiser also discloses that these logs are used to accurately compensate the at least one performance artist responsible for generating content on said digital audio recording file (**see Column 23, Lines 21-30 and Column 11, Lines 55-57 for reporting royalty payments**).

Therefore, Wiser discloses decoding and importing the batch file into a first database that catalogs public performance, based upon the incidence of the public broadcast and unrelated to the number of actual audience users and broadcast of the audio signal.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VDE system, as taught by Ginter, using the payment and reporting tracking system, as taught by Wiser, for the purpose of allowing music industry participants to protect their copyrights and could be used by rights

reporting agencies to bill distributors for royalties associated with the volume of electronic distribution of the media data files (**see Column 11, Lines 57-61 of Wiser**).

Claim 2 corresponds to claim 1, where Wiser discloses that the identification code embedded in the audio signal is a digital watermark (see Column 7, Lines 17-19).

Claim 3 corresponds to claim 1, where Ginter discloses embedding the identification code is performed by encoding software (see Column 6, Lines 45-55).

Claim 4 corresponds to claim 1, where Wiser discloses the identification code is in the form of a non-audible digital signal that is not rendered inoperable by one or more generations of analog taping and broadcast compressions (see the rejection of claim 2, which discloses the encoding of a watermark, which is not rendered inoperable by such analog deficiencies).

Claim 5 corresponds to claim 1, where Wiser discloses a second digital work library database to match the embedded identification code with the title of a digital audio work and its associated file information, and importing said title and associated file information from the second digital work library database to the first database (see element 120 in Figure 1 and Column 12, Lines 58-60 for a second database used to store the audio file and descriptive data (see Column 6, Lines 48-65)).

Claim 6 corresponds to claim 5, where Wiser discloses using the embedded identification code to match the digital audio work's title to the recorded and stored transmission or broadcast related data (see Column 14, Lines 52-60 for searching database 120 if the audio file is not stored at content manager 112) and Ginter discloses printing a digital audio work usage report having both the title of the digital audio work and the transmission and broadcast related data (see Column 228, Lines 45-56).

Claim 7 corresponds to claim 1, where the examiner notes that multimedia includes both audio and video, therefore the digital audio recording file is multimedia.

Claim 8-11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (U.S. Patent No. 6,253,193) in view of Wiser et al. (U.S. Patent No. 6,385,596) in further view of BMI (What is a Cue Sheet?).

Referring to claim 8, Ginter and Wiser teach the limitations of claim 1, but fail to disclose the use of a cue sheet.

BMI teaches using a cue sheet for keeping track of all the music used in films and on television shows (see Page 1, Third Paragraph for types of information in a cue sheet and Pages 2 and 3 for a sample cue sheet).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the information being tracked by Ginter and Wiser,

using BMI's cue sheet, as taught by BMI, for the purpose of ensuring its writers and publishers receive the royalties due to them (see Page 1, First Paragraph of BMI).

Referring to claim 9, Ginter discloses compensating at least one rights holder responsible for content of a digital audio recording file for the public performance of the content (**see Column 3, Lines 20-24 and Column 4, Lines 8-13 for the present invention employing a system to compensate a digital rights holder for content of a digital audio recording file (see Column 4, Lines 17-20) for the public performance of the content (note that is the electronic information is broadcasted, then it is broadcasted to be consumed by a listener/viewer)**), the content being included in a public broadcast (**see Column 3, Lines 24-29 for monitoring the content distributed from a digital broadcast and note arguments above for further portions of Ginter that teach that the electronic content can be broadcasted). Also note Column 260, Lines 11-15 for tracking “live performances”, which are public performances.**

Ginter also discloses associating an identification code with the digital audio recording file to produce an identified digital audio recording file (**see Column 130, Lines 7-11 for “embedded” content in a VDE object and Column 58, Lines 43-46 and Lines 59-64 for the VDE object containing a digital audio recording and further note Figure 20 for a content object containing identification information**).

Ginter also discloses generating an identification record correlating to the identification code and the digital audio recording file (**see Column 153, Line 32**

through Column 154, Line 67 for an object registry containing a database that stores a list all of content objects that a user receives).

Ginter also discloses broadcasting the identified digital audio recording file as an encoded audio signal, in the public broadcast (**see again Column 127, Lines 6-8 for "content delivery" over the media and Column 53, Lines 1-10 for broadcasting the information**), wherein the public broadcast being made by one of a radio or television station broadcast (**see Column 14, Lines 5-10**), including cable and satellite networks and Internet websites (**see Column 18, Lines 60-64**).

Ginter also discloses that the public broadcast is capable of remotely receivable simultaneously by a plurality of users constituting audience members of the public capable of receiving the audio signal being publicly broadcast (**see Column 127, Lines 45-49 for sending the VDE object to an electrical appliance and again note Column 3, Lines 24-33 for a digital broadcast being the distribution method for transmitting the VDE content to the user; simply by teaching a digital broadcast network allows the system of Ginter to be capable of publicly broadcasting content to a viewer). Also note above that television broadcasting networks can be used, which simultaneously transmit content to a plurality of audience members of a public broadcast.**

Ginter also discloses receiving by a monitoring station the audio signal being publicly broadcast and Ginter also discloses feeding by said monitoring station the audio signal into monitoring means for detecting the identification (**see again Column**

3, Lines 24-33, Figure 3 and Column 147, Line 36 through Column 148, Line 33 and the examiner's rebuttal to Applicant's arguments above).

Ginter also discloses storing and correlating (by said monitoring station) the identification code and data (see Column 153, Lines 53-59 for storing registration information relating to the VDE data in a secure database 610 and further note Column 147, Line 36 through Column 148, Line 33 for storing and correlating identification codes and data related to the data received) solely related to the public broadcast (see again Column 3, Lines 24-33 and the examiner's rebuttal to Applicant's arguments above) and unrelated to whether even any user constituting the audience members of the public have received the broadcast (see examiner's rebuttal to Applicant's arguments regarding this limitation) that stores and associates the identification code, and based on said identification code records and stores the identification code (see Column 153, Lines 62-64 for storing data from the VDE object 300) and transmission and broadcast related data in a batch file (see also saving shipping (*transmission*) and receiving (*broadcast*) data in tables (*batch file*) 444 and 446 in Figure 16), said broadcast related data including a date that the encoded audio signal was monitored, a time of day that the encoded audio signal was monitored (Column 155, Lines 22-23), and the duration of the monitored encoded audio signal (see Column 152, Lines 26-27 for a data length, which in the case of an audio file defines how long the song is). *Also note that the system of Ginter discloses tracking VDE, which is the content that is broadcast, and thus*

inherently teaches the limitation, “unrelated to the users constituting the audience members of the public”.

Ginter teaches compensating a user for his/her work (**see Column 3, Lines 20-24 and Column 4, Lines 8-18**), but fails to disclose decoding and importing the batch file into a first database that catalogs performance, transmission and broadcast of the encoded audio signal and using the first database to accurately compensate the at least one performance artist responsible for generating content on said digital audio recording file.

Wiser discloses a logging module 1014, which catalogs performance, transmission and broadcast of the encoded audio signal (**see Column 23, Lines 18-19 for logging each purchase of a media data file 200, which if purchased are transmitted/broadcasted (see Column 11, Lines 53-55)**). Wiser also discloses that these logs are used to accurately compensate the at least one performance artist responsible for generating content on said digital audio recording file (**see Column 23, Lines 21-30 and Column 11, Lines 55-57 for reporting royalty payments**).

Therefore, Wiser discloses decoding and importing the batch file into a first database that catalogs public performance, based upon the incidence of the public broadcast and unrelated to the number of actual audience users and broadcast of the audio signal.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VDE system, as taught by Ginter, using the payment and reporting tracking system, as taught by Wiser, for the purpose of allowing music industry participants to protect their copyrights and could be used by rights

reporting agencies to bill distributors for royalties associated with the volume of electronic distribution of the media data files (**see Column 11, Lines 57-61 of Wiser**).

Ginter and Wiser fail to disclose the use of cue sheets.

BMI teaches using a cue sheet for keeping track of all the music used in films and on television shows (**see Page 1, Third Paragraph for types of information in a cue sheet and Pages 2 and 3 for a sample cue sheet**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the information being tracked by Ginter and Wiser, using BMI's cue sheet, as taught by BMI, for the purpose of ensuring its writers and publishers receive the royalties due to them (**see Page 1, First Paragraph of BMI**).

Referring to claims 10-11, see the rejection of claims 5-6.

(10) Response to Argument

ARGUMENTS WITH RESPECT TO THE REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

The Examiner agrees with Applicant's arguments and the rejection is withdrawn.

ARGUMENTS WITH RESPECT TO THE REJECTION UNDER 35 U.S.C. §102(E) OF CLAIM 1

The Examiner agrees with Applicant's arguments and the rejection is withdrawn.

ARGUMENTS WITH RESPECT TO THE REJECTION UNDER 35 U.S.C. §103(A) OF
CLAIMS 1-7 AND 9-11 AND ALSO THE REJECTION UNDER 35 U.S.C. §103(A) OF
CLAIM 8

Applicant (**and Professor Memon**) argues that Ginter fails to teach a public broadcast. The Examiner respectfully disagrees.

Note Column 3, Lines 21-33, which clearly states that the distribution of content that is detected and monitored can be transmitted using a **digital broadcast**, wherein the detection and monitoring can be performed by **owners and distributors**. Also note Column 14, Lines 5-28 and Column 18, Lines 1-13 teaching various distribution methods that include radio and/or television **broadcasts**. Therefore, Ginter clearly teaches a public broadcast as claimed.

However, Applicant insists that this is not a **public broadcast**. The Examiner disagrees and notes that Applicant's specification provides no guidance as to how a public broadcast differs from a **broadcast** taught throughout Ginter. Further, a broadcast is defined as, "**To transmit (a radio or television program) for public or general use**". The Examiner notes that this is clearly taught by the cited portions of Ginter (**see above**).

Professor Memon argues that Ginter is not interested in a public broadcast to multi-user's and that there is no teaching of monitoring the public broadcast transmitted by a sender regardless of whether any user receives the information or not. Applicant has paraphrased these arguments to mean that nothing in Ginter suggest the step of receiving by a monitoring station the audio signal publicly broadcast. The Examiner respectfully disagrees.

Ginter teaches monitoring a public broadcast at Column 3, Lines 21-28 for delivering content over a digital broadcast from distributors of electronic digital information and provides to the ability to **detect and monitor** such content. Further note Column 9, Lines 39-60 for teaching that the VDE system controls **auditing and reporting of electronic content and/or appliance usage**. Further note Column 253, Line 64 through Column 255, Line 18 for monitoring (**by auditing**) objects broadcast at three different levels of the distribution network (**all of which receive the broadcast as disclosed at Column 254, Lines 30-34**). The first level being Distributors 106 at Column 254, Lines 49-65, the second level being the content owner level at Column 254, Line 66 through Column 255, Line 5 and the third level being the end user at Column 255, Lines 11-18. All of these examples teach monitoring a public broadcast at various locations of the distribution network.

Applicant also argues that the public broadcast recited in the claims and the broadcast of Ginter are different. The Examiner respectfully disagrees.

Applicant further explains that in the presently claimed invention, the public

broadcast occurs without regard to whether a listener is listening, let alone has made a request for “*the broadcast*” (in other words, a public broadcast is passive to the listener).

. The Examiner notes that this is inherent to a broadcast of information to a plurality of end-users. A broadcast is transmitted from a single point to multiple points in a distribution network, regardless of whether a user receives the data or not (**this would of course be the option of the user**). For example, while the Examiner may go home to view the ESPN broadcast channel at 8:00pm, the Examiner's friend may go home and choose not to watch the ESPN broadcast channel at 8:00pm, however the video data will still be transmitted from the headend distribution center to both the Examiner and the Examiner's friend's set-top boxes, regardless of whether the Examiner or the Examiner's friend decides to view the ESPN channel. Therefore, the Examiner notes that the broadcast of data in Ginter is the same as the public broadcast described by Applicant's specification.

Applicant further argues that in Ginter a request must be made to a broadcast server in order for the user to receive the broadcast and for Ginter to allegedly monitor it.

Applicant has made no reference to the portions of Ginter that teach a broadcast is only transmitted upon request from a user. Further, the Examiner notes that if data is broadcasted it is transmitted regardless of a request from the user (**this is the inherent to any broadcast of data**) and as described above, multiple levels of the distribution network is used to monitor the public broadcast.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

/Jason P Salce/

Primary Examiner, Art Unit 2421

April 21, 2009

Conferees:

Scott Beliveau

/Scott Beliveau/

Supervisory Patent Examiner, Art Unit 2427

Joseph G. Ustaris

/Joseph G Ustaris/

Primary Examiner, Art Unit 2424